

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
Rochester Division

DONALD MONTGOMERY,
as an individual, and on behalf of
all other persons similarly situated,

Plaintiff

**Declaration of the
Attorney to the Plaintiff**

vs.

Civil No.: 6:14-cv-06709

ANDREW M. CUOMO, Governor of the State
of New York; ANN MARIE T. SULLIVAN,
Commissioner of the New York State
Office of Mental Health; MICHAEL C. GREEN,
Executive Deputy Commissioner of the
New York State Division of Criminal Justice Services;
JOSEPH A. D'AMICO, Superintendent of
the New York State Police; VINCENT F. DEMARCO,
Suffolk County Sheriff's Department; and,
EASTERN LONG ISLAND HOSPITAL,

Hon. Charles J. Siragusa

Defendants.

Paloma A. Capanna, Attorney, an attorney duly admitted to practice before this
Court, declares, pursuant to 28 U.S.C. §1746, as follows:

1. I am the attorney representing the Plaintiff, Donald Montgomery, in the above-captioned action.
2. I submit this declaration in support of the Plaintiff's Motion, for the limited purpose of providing the Court with true and accurate copies of the following documents

contained in the annexed documents and referenced in the Memorandum of Law in Support of the Plaintiff's Motion for a Preliminary Injunction (dated January 15, 2015), as follows:

Exhibits	Exhibit Description
“Exhibit Group A”	
1	Senate Bill S2230-2013 (same as Assembly Bill A2388-2013).
2	Memo: Bill S2230-2013.
“Exhibit Group B”	
3	New York State Assembly transcript of proceedings (January 15, 2013).
“Exhibit Group C”	
4	New York State Senate transcript, Standing Committee on Mental Health and Developmental Disabilities, “Public Hearing: To Look at the Implementation and Impact of the Mental Health Requirements in the New York Safe Act” (conducted May 31, 2013).
“Exhibit Group D”	
5	Office of Mental Health, “Mental Health Law Section 9.46 Guidance Document” (undated).
6	Office Mental Health, “Hospital Guidance: New York SAFE Act Reporting Guidelines for Article 28 and 31 Hospitals,”
7	Office of Mental Health, “USER GUIDE: Integrated SAFE Act Reporting System (ISARS), Version 1.0.2.6”, updated September 30, 2013
8	Office of Mental Health, “Introduction for Mental Health Providers,” PowerPoint presentation (March 12, 2013)
9 - A	Office of Mental Health, “Certificate of Relief Pertaining to Firearm Possession” (web page last modified 3/31/2014).
9 - B	Office of Mental Health, “Certificate of Relief Request Pursuant to Mental Hygiene Law Section 7.09(j) and Part 543 of Title 14

	N.Y.C.R.R.” (web page last modified 11/9/2012).
9 - C	Office of Mental Health, “Application for Certificate of Relief from Disabilities Relating to Firearms.”
9 - D	Office of Mental Health, “Certificate of Relief Pertaining to Firearm Possession, Frequently Asked Questions” (web page last modified 11/9/2012).
10	New York State Police “Field Guide” (September 2013).
11	Hartocolis, Anemona, “Mental Health Issues Put 34,500 on New York’s No-Guns List,” The New York Times (October 19, 2014)
12	Hartocollis, Anemona and Kaplan, Thomas, “Cuomo Defends Law Denying Guns to Mentally Ill People,” The New York Times (October 19, 2014).
13	Skinner, Curtis, “VA defies gun statute,” Times Union (March 12, 2013).
“Exhibit Group E”	
14	ATF Form 4473, “Firearms Transaction Record” (rev. April 2012).
15	ATF Procedure, 2013-1.
16 - A	Federal Bureau of Investigation, “NICS Appeals Brochure” (web page, September 2013).
16 - B	Federal Bureau of Investigation, “NICS Appeal Request Form” (web page, undated)
16 - C	Federal Bureau of Investigation, FD-258 fingerprint card with instructions (rev. 9-9-13).
16 - D	Federal Bureau of Investigation, “Authorization to Release Criminal History Information and Release of Liability”
16 - E	Federal Bureau of Investigation, “Frequently Asked Questions” (web page, undated)
17	Federal Bureau of Investigation, “Active Records in the NICS Index” (December 31, 2014); Federal Bureau of Investigation, “Federal Denials” (December 31, 2014); Federal Bureau of


	Investigation, "NICS Index" brochure (December 2013).
"Exhibit Group F"	
18	The National Center for State Courts with The National Consortium for Justice Information and Statistics, "State Records Estimates Development and Validation Project" (dated September 30, 2010).
19	Bureau of Justice Statistics, "State-by-State Summaries for FY2013 NICS Act Record Improvement Program (NARIP)."
"Exhibit Group G"	
20	Eastern Long Island Hospital "Notice of Status and Rights/Emergency Admission (to be given to the patient at the time of admission to the hospital)/Section 9.39 Mental Hygiene Law" in two versions, one left for the Plaintiff and one provided from the hospital to the Plaintiff's Attorney as part of his medical records.
21	Letter from Mr. Montgomery (dated June 10, 2014), addressed to the Eastern Long Island Hospital.
22	Eastern Long Island Hospital letter (dated July 2, 2014), addressed to the Plaintiff.
23	New York State Police letter (dated May 29, 2014), addressed to the Suffolk County Clerk's Office.
24	Suffolk County Sheriff's Department, "General Receipt" for pistol license of the Plaintiff (dated May 30, 2014); business card of Deputy Sheriff Investigator Darren F. DiCarlo, Pistol Licence (<i>sic</i>) Bureau, Suffolk County Sheriff's Office; Suffolk County Sheriff's Department, "Property Receipt" for handguns of the Plaintiff (dated May 30, 2014).
25	Suffolk County Sheriff's Department letter (dated June 2, 2014), addressed to the Plaintiff.
26	Paloma A. Capanna, Attorney, letter (dated September 2, 2014), addressed to the Suffolk County Sheriff's Office, Pistol License Bureau, enclosing "NYS Firearms License Request for Public Records Exemption," signed by Donald Montgomery on August 29, 2014; Paloma A. Capanna, Attorney, letter (dated September 2, 2014), addressed to the Suffolk County Sheriff's Office, Records

	Access Officer, enclosing "Application for Public Access to Records," signed by Donald Montgomery on August 29, 2014; Paloma A. Capanna, Attorney, letter (September 2, 2014), addressed to the Suffolk County Clerk, Records Access Officer, enclosing "Application for Public Access to Records," signed by Donald Montgomery on August 29, 2014.
27	Suffolk County Sheriff's Department letter (dated September 8, 2014), addressed to the Plaintiff.
28	Suffolk County Sheriff's Department letter (dated September 8, 2014), addressed to Counsel to the Plaintiff, including the enclosures of letter of the New York State Police (dated May 29, 2014), which itself was addressed to the Suffolk County Clerk's Office [in reference to the above Exhibit 23, the letter is the same, the handwriting appears on the copy sent to Counsel to the Plaintiff and is of unknown origin]; letter of the Suffolk County Sheriff's Department (dated June 2, 2014), addressed to the Plaintiff [in reference to the above Exhibit 27, the letter is the same]; letter of the Suffolk County Sheriff's Department (dated September 8, 2014), addressed to the Plaintiff [in reference to the above Exhibit 26, the letter is the same]; "Property Receipt" from the Suffolk County Sheriff's Department (dated May 30, 2014) [in reference to the above Exhibit 24, the Receipt contains additional handwritten information]
29	Office of Mental Health letter (dated November 10, 2014), addressed to Counsel to the Plaintiff; Office of Mental Health letter (dated October 9, 2014), addressed to Counsel to the Plaintiff; Office of Mental Health letter (dated September 11, 2014), addressed to Counsel to the Plaintiff; letter of Counsel to the Plaintiff (dated September 2, 2014), addressed to the Office of Mental Health with enclosure of "Application for Public Access to Records," signed by the Plaintiff on August 29, 2014.
30	Letter, believed to have been transmitted by the Department of Criminal Justice Services (undated), sent to Counsel to the Plaintiff, including envelope within which it was received, and including the return of the original letter from Counsel to the Plaintiff (dated September 2, 2014) and the original "Application for Public Access to Records," signed by the Plaintiff on August 29, 2014.
31	New York State Police letter (dated September 11, 2014), addressed

	to Counsel to the Plaintiff; letter from Counsel to the Plaintiff (dated September 2, 2014) and the "Application for Public Access to Records," signed by the Plaintiff on August 29, 2014.
32	Letter from Counsel to the Plaintiff (dated September 2, 2014) and the "Application for Public Access to Records," signed by the Plaintiff on August 29, 2014.
"Exhibit Group H"	
33	New York State Police letters (dated December 2, 2014) to Joshua C. Grant, Sheldon Fulkerson, Kenneth Hahn, Robert Bradfield, Eric Carlstan, David W. Jones, Gary Distefano, Dexter Greene, and Kenneth E. Mathison, along with the corresponding form of each individual "New York State Police Freedom of Information Request for Records" (dated January 20, 2014).
34	Second Amendment Coalition White Paper Series – 2014, "The Long Road to the SAFE Act: How Did Cuomo Do It So Fast?" by Paloma A. Capanna, Attorney & Policy Analyst (December 2014).
35	State of Utah, Department of Public Safety, letter (dated in 2014), addressed to "K.B."
36	Order Reinstating Permit (signed by a County Court Judge, dated in 2014).
37	NYS Police letter (dated in 2014), addressed to a County Clerk's Office, concerning "K.B."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: Webster, New York
January 15, 2015


Paloma A. Capanna, Attorney